

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

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|---------------------------|---|--------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | 4:03CR3055 |
| |) | |
| v. |) | |
| |) | |
| ISIDRO TERRIQUEZ CHAVEZ, |) | MEMORANDUM OPINION |
| |) | |
| Defendant. |) | |
| _____ |) | |

This matter is before the Court on defendant's motion (Filing No. 52) to vacate or reduce sentence pursuant to 28 U.S.C. § 2255. The Court has conducted an initial review of the defendant's motion and finds that no response is needed from the government, nor is there any need for an evidentiary hearing.

The defendant complains that he received ineffective assistance of counsel in that counsel failed to seek a reduction of his offense level based upon his having a minor role in the offense, pursuant to U.S.S.G. § 3B1.2. On October 7, 2004, the defendant entered a plea of guilty to Count I of the indictment, which charged that between on or about November 1, 2001, and March 12, 2003, in the District of Nebraska, the defendant knowingly conspired and agreed with other persons to distribute or possess with intent to distribute 500 grams or more of a mixture or substance containing methamphetamine. The defendant's plea was pursuant to a plea agreement which he entered into with the government under date of October 1, 2004 (Filing No. 27).

After reviewing with the defendant the various provisions of this plea agreement, the defendant advised the Court that he understood the terms and conditions of the plea agreement. Paragraph 10 of that plea agreement provides:

You agree that you are responsible, beyond a reasonable doubt, for at least 500 grams but less than 1.5 kilograms of a mixture or substance containing a detectable amount of methamphetamine and, therefore, pursuant to U.S.S.G. §§ 2D1.1 and 2D1.2, the base offense level is 32. The parties further agree that Isidro Terriquez Chavez should not receive any upward or downward adjustments for role under U.S.S.G. § 3B1.1 or § 3B1.2.

In addition, during the course of the Rule 11 hearing, the defendant specifically acknowledged that he had sufficient time to discuss this case with his counsel and that he at that time had no objections of any kind to the manner in which he was represented by counsel.

This history and Paragraph 10 of the plea agreement dispose of defendant's claim since he specifically waived any right to seek a role adjustment pursuant to § 3B1.2. Under these circumstances, the Court finds that defendant's motion should be

denied. A separate order will be entered in accordance with this memorandum opinion.

DATED this 6th day of February, 2006.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court